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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

HUYNH, LOUIS K

ART UNIT PAPER NUMBER

3721

DATE MAILED: 10/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/914,227	Applicant(s) YAMAY, YEHUDA	
	Examiner Louis K. Huynh	Art Unit 3721	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 June 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 7-16, 18 and 20 is/are rejected.
- 7) ☒ Claim(s) 1-6, 17 and 19 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 February 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☒ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Priority

1. Acknowledgment is made of applicant's claim for foreign priority based on two (2) applications filed in Israel: 128710 filed 02/24/1999 and 132708 filed 11/02/1999. A copy of the certified copy of the Israel 128710 has been received and placed in the file wrapper. However, a copy of a certified copy of the Israel 132708 has not been received.

Claim Objections

2. Claims 18 and 20 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. In the instant case, the inert gases (claim 18), the characteristic of the gas-impermeable membrane (claim 20) and the arrangement between the membrane and the product (claim 20) do not result in structurally differences and/or further structurally limiting the claimed apparatus of the present invention.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 1-6, 17 and 19 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the

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claimed invention. Claim requires the step of “*crosspressing displacing said container body...*” which is not disclosed and/or taught in the originally filed specification.

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 1-6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1, line 25: “crosspressing displacing” is indefinite because the specification does not disclose and/or teach how the container body is crosspressing displaced; therefore, it is unclear as to what “crosspressing displacing” step applicant is referring.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 7-16, 18 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO'400 (WO 91/03400).

WO'400 discloses an apparatus for forming a hermetically sealed container including: a holder (21) having an axially projecting skirt for holding a container (3) having flange (9); a spacer (65) having an opening engageable with a lid-forming film (5) for defining a space defined by the container (3), the holder (21), the spacer (65) and the lid-forming film (5); a

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means (89) for bringing the spacer (65) into sealing engagement against the lid-forming film (5) and the holder (21); a gas inlet (97) formed on the spacer (65) and a gas outlet (93); an axially displaceable heat sealing mechanism (103) for displacing the lid-forming film (5) toward the container (3) through the opening of the spacer (65) and attaching the lid-forming film to the flange (9) of the container (3) to form a gas-tight seal; a vacuum forming cup (81) sealingly engageable with the bottom surface of the holder (21); and an axially displaceable trimming member (133) for trimming the lid-forming film (5) around the flange (9) of the container (3).

9. Regarding the recitation of the container not being filled entirely by the product in the preamble of claim 7 and also in claim 20, the container (3) used in the apparatus of WO'400 is capable of receiving a product less than the container volume, and the volume, shape and/or type of the product to be packaged is obvious as a matter of engineering design choice and thus does not differentiate the claimed apparatus over the applied prior art satisfying the claimed structural limitations.

10. Regarding the inert gas to be used in replacing the original gas in the container as recited in claims 7 and 18, it would have obvious to a skilled person in the art to provide an inert gas such as nitrogen or carbon dioxide as the replacement gas depending on the type of product to be packaged. Furthermore, the gas inlet in the WO'400 apparatus is fully capable of accepting such gases.

11. Regarding the limitation of the lid-forming film being a single flat flexible closure-forming gas-impermeable membrane and is gas-impermeable in its entirety as recited in claim 20, the apparatus of WO'400 is capable of utilizing such single flat flexible closure-forming gas-

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impermeable material as the lid forming film and thus such limitation does not differentiate the claimed apparatus over the applied prior art satisfying the claimed structural limitations.

Allowable Subject Matter

12. Claims 1-6, 17 and 19 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action. Claim 1 as amended requires solely a single flat, flexible closure-forming, gas-impermeable membrane in forming the closure for the container containing a product in combination with the process steps of using the holder, the spacer member and the press plate in order to form a packaged product, which is not disclosed and/or taught by the prior art of record.

Response to Arguments

13. In response to applicant's argument that the container of the present invention has a rim fitted with a closure wherein the container is not filled entirely by the product and that the closure is formed from solely a single flat flexible closure-forming substantially a gas-impermeable membrane, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). In the instant case, the WO'400 apparatus is fully capable of accepting a container having product not filled to or above the rim of the container, is fully capable of sealing a single flat flexible closure-forming substantially a gas-impermeable membrane to the container, and is fully capable of

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introducing an inert replacement gas into the closed space between the container and the closure member. Therefore, such intended uses with respect to the WO'400 apparatus are obvious to the skilled person in the art and thus are not patentably distinguish the claimed apparatus from the apparatus of the WO'400.

Conclusion

14. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

15. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

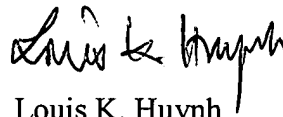
16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Louis K. Huynh whose telephone number is (703) 306-5694 or (571) 272-4462 after November 08, 2004. The examiner can normally be reached on M-F from 9:30AM to 5:00PM.

17. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I. Rada can be reached on (703) 308-2187 or (571) 272-4467 after November

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08, 2004. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

18. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Louis K. Huynh
Patent Examiner
Art Unit 3721

October 19, 2004